IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4356 OF 2005

Shri Dhanaji Santu Jadhav : Petitioner
(Orig. Plaintiff)

V/s.

Shri Vishnu Santu Jadhav & Ors. : Respondents
(Orig.Defendants)

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Mr.Dilip Bodake for the petitioner.

None present for the respondents.

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CORAM : S.A. BOBDE, J.

July 6, 2005.

P.C.:

1. The petitioner has challenged the order of the appellate Court reversing the order of the trial Court. By the impugned order, the appellate Court has refused to grant injunction to the petitioner.

2. The petitioner has sued for partition and separate possession of what he claims to be ancestral properties. The trial Court granted an injunction, but the appellate Court has observed that the petitioner has produced 7/12 extracts of the property which do not specifically show

separate ownership of the property, having regard to other evidence on record. The appellate Court has found that the respondents' case that there was an oral partition in the year 1965 appears to be more probable. It appears that the petitioner has also admitted before the appellate Court vide para 6 that other properties, except block no.130 have already been partitioned. The appellate Court has observed that there is sufficient evidence that after the oral partition, there has been separate user of the different potions of the property which has been accepted by all the branches of the family. The decendants of all four brothers who partitioned the property have been separately enjoying a portion of the property and they are cultivating separate portions and have also spent on improvement. This includes the respondent no.12 (original appellant). Not only this, it is found that the different brothers have sold their shares in the properties. These transactions are evident from the documents, entries, etc. The appellate Court has observed that there is enough evidence to show separate residence, separate construction of house, separate construction of tombs of the ancestors, separate electricity connections, ration cards and separate accounts for payment of revenue tax. In these circumstances, I see no reason to interfere with the prima facie finding of the appellate Court that there is an oral

partition effected between the four brothers and their decendants have also been separated thereafter. As regards the specific plea of the petitioner that the respondent no.12 should be restrained from constructing his house, the appellate Court has observed that even the trial Court has found that he was only reconstructing the house where an earlier house was in existence. The appellate Court has expressed its agreement with the inference of the trial Court. In these circumstances, the balacne of convenience lies in favour of the petitioner. The appellate Caorut has held that on the contrary, the balance of convenience lies in favour of the respondent no.1, since he is found to be reconstructing the house which was already there.

3. In these circumstances, there is no merit in the petition which is hereby dismissed. Needless to say that any interlocutory order shall not influence the decision of the suit.

S.A. BOBDE, J.